IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

CWP No.: 578 of 2004.

Decided on: 25.4.2007.

Shiv Ram.

… … … Petitioner.

Versus

Union of India and others .

… … … Respondents.

Coram:

The Hon'ble Mr. Justice Rajiv Sharma, J.

Whether approved for reporting? No.

For the petitioner(s): **Mr. S.D. Gill, Advocate.**

For the Respondents: **Mr. Anoop Rattan, Central Government Counsel.**

Rajiv Sharma, Judge (Oral):

By medium of this petition the petitioner is seeking his promotion from the post of Havaldar to Naib Subedar.

Mr. S.D. Gill appearing on behalf of the petitioner submits that his client has filed non-statutory complaint on 3rd January, 2003 which is marked as Annexure P-3. The non-statutory complaint of the petitioner has not been decided on merit as is evident from the contents of Annexure P-8 dated 26th October, 2003. The petitioner submits that in the mean time some inquiry was also held to verify as to who has filled/signed the

---

Whether reporters of local papers may be allowed to see the judgment? No.

ACR, whether it was the petitioner or some body else vide Annexure P-6. The findings of the inquiry are marked as Annexure P-6.

I have perused the record and heard the parties.

The ground for the denial of promotion to the petitioner is that he was lacking ACR criteria for promotion to the rank of Naib Subedar as he was graded “high average” since 1998 till retirement in February, 2004 except for the year 2001, in which he was graded “above average”.

Mr. Anoop Rattan submits that for promotion to the rank of Naib Subedar a minimum of three above average to high above average for the last five years are mandatory. Mr. S.D. Gill has drawn the attention of this Court to Annexure P-3 whereby the petitioner has filed non-statutory complaint against the ACRs, but the same was not decided on merit as is evident from Annexure P-8, dated 26th October, 2003. The ground for rejection of the non-statutory complaint was delay in filing the same.

I am of the firm view that once the petitioner has made non-statutory complaint as per Annexure P-3, the same was to be decided on merits instead of rejecting the same on the hyper-technical ground of delay. Petitioner’s entire career was based on the out-come of the non-statutory complaint filed against the ACRs. If the case of the petitioner had been considered expeditiously resulting in toning down his ACRS, the petitioner could have been promoted to the higher post of Naib Subedar.

Accordingly, the writ petition is allowed. The respondents are directed to decide the non-statutory complaint of the petitioner made vide Annexure P-3 within a period of eight weeks from today and if the non-statutory complaint is decided in his favour, the consequential steps for considering the petitioner for promotion will be initiated within a period of

three months. If the petitioner is promoted, he will be entitled to all the consequential benefits, i.e. arrears of salary and his pension will be worked out on the basis of higher scale.

There shall be no order as to costs.

(Rajiv Sharma)
Judge

April 25, 2007.
(sck)